

**Introduced by Senator Burton**

February 18, 2004

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An act to amend Section 1107 of the Evidence Code, and to amend Section 1473.5 of the Penal Code, relating to battering.

LEGISLATIVE COUNSEL'S DIGEST

SB 1385, as introduced, Burton. Battering and its effects.

Existing law permits the admission in criminal actions of expert testimony regarding battered women's syndrome, including testimony on the nature and effect of physical, emotional, or mental abuse on the beliefs, perceptions, or behavior of victims of domestic violence, as specified. Existing law defines terms for purposes of this law, and provides that these provisions shall be known, and may be cited as the Expert Witness Testimony on Battered Women's Experiences Section of the Evidence Code.

This bill would instead make these provisions known and citable as the Expert Witness Testimony on Battering and Its Effects Section of the Evidence Code, and would change all references to "Battered Women's Syndrome" in that section to read "battering and its effects." It would also clarify the definition of "domestic violence" as used in this provision. This bill would also indicate that its amendments of these provisions are not intended to impact existing decisional law, as specified.

Existing law, operative until January 1, 2010, includes among the circumstances under which a writ of habeas corpus may be prosecuted to inquire into the cause of a person's imprisonment the fact that evidence relating to battered women's syndrome, based on abuse committed on the perpetrator of a homicide by the victim of the homicide, was not introduced at trial, as specified. Specifically, existing

law authorizes this writ when the plea or the commencement of the homicide trial predated January 1, 1992, and, had the evidence of battered women's syndrome been introduced, there is a reasonable probability that the result of the proceedings would have been different.

The bill would eliminate the January 1, 2010, repeal of this writ authorization, and would provide that, instead of "evidence relating to battered women's syndrome," "expert testimony relating to battering and its effects" would be the basis for this writ. Furthermore, this bill would permit the writ to be prosecuted concerning convictions for any offenses that occurred before August 29, 1996, as to which expert testimony admissible pursuant to Section 1107 of the Evidence Code may be probative on the issue of culpability. It would also permit the writ to be prosecuted if expert testimony relating to battering and its effects was not effectively introduced at trial instead of only if evidence relating to battered women's syndrome were not introduced at all.

Existing law makes it a grounds for denial of a new petition that a court determined on the merits of a prior petition for a writ of habeas corpus that the omission of evidence relating to battered woman's syndrome at trial was not prejudicial and did not entitle the petitioner to the writ of habeas corpus.

This bill would permit this denial if the court found that the omission of expert testimony relating to battered women's syndrome or battering and its effects at trial was not prejudicial and did not entitle the petitioner to the writ of habeas corpus.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1.   Section 1107 of the Evidence Code is amended  
2     to read:  
3     1107.   (a) In a criminal action, expert testimony is admissible  
4     by either the prosecution or the defense regarding ~~battered~~  
5     ~~women's syndrome~~ *battering and its effects*, including the nature  
6     and effect of physical, emotional, or mental abuse on the beliefs,  
7     perceptions, or behavior of victims of domestic violence, except  
8     when offered against a criminal defendant to prove the occurrence  
9     of the act or acts of abuse which form the basis of the criminal  
10    charge.



(b) The foundation shall be sufficient for admission of this expert testimony if the proponent of the evidence establishes its relevancy and the proper qualifications of the expert witness. Expert opinion testimony on ~~battered women's syndrome~~ *battering and its effects* shall not be considered a new scientific technique whose reliability is unproven.

(c) For purposes of this section, "abuse" is defined in Section 6203 of the Family Code, and "domestic violence" is defined in Section 6211 of the Family Code ~~or and may include~~ acts defined in Section 242, subdivision (e) of Section 243, ~~or~~ Section 262, 273.5, 273.6, 422, or 653m of the Penal Code *and other provisions of law that involve victimization within the relations described in Section 6211 of the Family Code.*

(d) This section is intended as a rule of evidence only and no substantive change affecting the Penal Code is intended.

(e) This section shall be known, and may be cited as, the Expert Witness Testimony on ~~Battered Women's Experiences~~ *Battering and Its Effects* Section of the Evidence Code.

(f) *The changes in this section that become effective on January 1, 2005, are not intended to impact any existing decisional law regarding this section, and that decisional law should apply equally to this section as it refers to "battering and its effects" in place of "battered women's syndrome."*

SEC. 2. Section 1473.5 of the Penal Code is amended to read:

1473.5. (a) A writ of habeas corpus also may be prosecuted on the basis that ~~evidence expert testimony~~ relating to ~~battered women's syndrome~~ *battering and its effects*, within the meaning of Section 1107 of the Evidence Code, ~~based on abuse committed on the perpetrator of a homicide by the victim of that homicide,~~ was not *actually or effectively* introduced at the trial relating to the prisoner's incarceration, and is of such substance that, had it been introduced, there is a reasonable probability, sufficient to undermine confidence in the judgment of conviction, that the result of the proceedings would have been different. Sections 1260 to 1262, inclusive, apply to the prosecution of a writ of habeas corpus pursuant to this section.

(b) This section is limited to judgments of conviction for a ~~violation of Section 187 resulting from a plea entered, or a trial commenced, before January 1, 1992~~ *offenses that occurred before August 29, 1996 as to which expert testimony admissible pursuant*

1 *to Section 1107 of the Evidence Code may be probative on the issue*  
2 *of culpability.*

3 (c) If a petitioner for habeas corpus under this section filed a  
4 petition for writ of habeas corpus prior to the effective date of this  
5 section, it is grounds for denial of the new petition if a court  
6 determined on the merits in the prior petition that the omission of  
7 ~~evidence~~ *expert testimony* relating to battered woman's syndrome  
8 *or battering and its effects* at trial was not prejudicial and did not  
9 entitle the petitioner to the writ of habeas corpus.

10 ~~(d) This section shall remain in effect only until January 1,~~  
11 ~~2010, and as of that date is repealed, unless a later enacted statute,~~  
12 ~~that is enacted before January 1, 2010, deletes or extends that date.~~

